

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 02-00114-03-CR-W-NKL
)	and No. 03-00169-01-CR-W-NKL
GWENDOLYN BAKER,)	
)	
Defendant.)	

PLEA AGREEMENT

The following agreement has been made between GWENDOLYN BAKER, defendant, by and through her undersigned counsel, Lance D. Sandage and the United States of America, by and through the United States Attorney Todd P. Graves, and the undersigned Assistant United States Attorneys. There are no agreements or understandings as to the disposition of this case other than those set forth herein.

1. The defendant agrees to plead guilty to (a) Count One of the Indictment in case No. 02-00114-03-CR-W-NKL charging a violation of Title 18, United States Code, Section 371, that is, conspiracy to commit interstate transportation of property obtained by fraud in violation of Title 18, United States Code, Section 2314; and (b) Count Twenty-two of the Indictment in case No. 02-00114-03-CR-W-NKL charging a violation of Title 18, United States Code, Section 981(a)(1)(C), that is, criminal forfeiture. Defendant further agrees to waive her right to grand jury

indictment waive any objections to venue in the Western District of Missouri, and plead guilty to a Two Count Information charging two counts of Title 18, United States Code, Section 2314. The allegations in the Indictment and the proposed Information setting forth the charges are incorporated by reference into this Plea Agreement. By entering into this Plea Agreement, the defendant admits that she knowingly committed these offenses, and is in fact guilty of these offenses.

2. The parties agree that the facts constituting the offense to which she is pleading guilty are as follows:

(a) Defendant BAKER admits that, as charged in Count One of the Indictment in case No. 02-00114-03-CR-W-NKL, she agreed with others, including her co-defendants, James R. Nichols and Robert Gomez, to participate in a scheme to defraud individuals into providing money to purchase vehicles from an estate. Defendant admits that during part of the time of the alleged conspiracy she knew that the estate and the cars did not exist and that she committed one or more overt acts in furtherance of the conspiracy during the time period she had such guilty knowledge.

Defendant BAKER further admits that, as charged in the proposed Information, she committed the offense of interstate transportation of property obtained by fraud by accepting car

purchase money from individuals based on false representations concerning the availability of the cars.

3. The defendant also acknowledges and agrees that the conduct charged in the remaining counts of the Indictment may be considered as well as all other uncharged related criminal activity where she had guilty knowledge as "relevant conduct" for purposes of calculating the offense level for Counts One and Fifteen, in accordance with U.S.S.G. § 1B1.3(a)(2).

4. The defendant understands that the maximum sentence which may be imposed against her under Count One of the Indictment to which she has agreed to plead guilty are as follows:

(a) Count One of Indictment No. 02-00114-03-CR-W-NKL, conspiracy to commit interstate transportation of property obtained by fraud: not more than five years of imprisonment, a fine of not more than twice the financial gain to her and others, three years of supervised release, an order of restitution to all victims of the fraud scheme and a \$100 mandatory special assessment. The defendant further understands that the offense to which she is pleading guilty under Count One is a Class D felony; and

(b) Counts One and Two of the proposed Information, interstate transportation of property obtained by fraud: not more than ten years of imprisonment, a fine of not more than

\$250,000 or twice the financial gain to her and others, three years of supervised release, an order of restitution to all victims of the fraud scheme and a \$100 mandatory special assessment. The defendant further understands that the offense to which she is pleading guilty under the Information is a Class C felony.

(c) Count Twenty-two, criminal forfeiture: a money judgment of the total amount received as a result of the fraud scheme and forfeiture of any and all assets received as a result of the scheme.

5. The defendant acknowledges that she has discussed the issue of supervised release with her attorney and that she understands the nature and the effects of supervised release. In particular, the defendant understands that a violation of a condition of her supervised release may result in the revocation of supervised release and the imposition of an additional term of imprisonment of not more than two years with respect to the charges in the Indictment or Information to which she will plead guilty. The defendant further understands that if she violates a condition of supervised release, she could be required to serve all of the term of supervised release imposed by the Court, without credit for time previously served during post-release supervision.

6. The defendant understands that this Plea Agreement binds only the defendant and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority. The United States has informed the defendant, however, that if any federal, state, or local prosecution authority informs the defendant that it is considering criminal prosecution of her that the United States will do the following: (a) inform the other prosecution authority of the defendant's guilty plea in this case, including the possible range of punishment, and (b) recommend to the other prosecution authority that no additional charges be filed against the defendant.

7. In return for the defendant's pleas of guilty to the charges set forth in Count One and Twenty-two of the Indictment, and to the Two Count Information, the United States Attorney for the Western District of Missouri agrees as follows:

(a) The United States will dismiss the remaining counts of the Indictment against defendant BAKER at the time of sentencing;

(b) The United States will not file any additional charges against defendant arising out of the present offenses or investigation in the Western District of Missouri;

(c) If defendant BAKER provides substantial assistance in the investigation and prosecution of others, including but not

limited to testimony at the trial of her co-defendants, the United States will file a motion to depart downward from the sentencing guideline range of sentences required by the United States Sentencing Guidelines. Defendant BAKER acknowledges that additional paragraphs of this Plea Agreement apply to any such motion for downward departure;

(d) The United States will not seek an upward departure from the sentencing guideline range of sentences; and

(e) The United States may, in its sole discretion, make a sentence recommendation to the Court which is not binding on the Court.

In the event that the defendant breaches or violates this Plea Agreement or otherwise fails to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have resulted.

The defendant understands and agrees that in the event she violates this Plea Agreement, all statements made by her to law enforcement agents subsequent to the execution of this Plea Agreement, any testimony given by her before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against her in any and all criminal proceedings. The defendant waives any rights which might be asserted under the

United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by her subsequent to this Plea Agreement.

8. The defendant agrees to cooperate fully and truthfully with the United States as follows:

a. Defendant agrees to provide truthful, complete, and accurate information and testimony in the trial of this matter or in any related hearing;

b. Defendant agrees to provide all information concerning her knowledge of, and participation in, the offenses charged in the Indictment, and any other crimes about which she has knowledge;

c. Defendant agrees that she will not falsely implicate any person or entity and will not protect any person or entity through false or misleading information or omission;

d. Defendant agrees to testify as a witness before any grand jury, hearing, or trial when requested to do so by the United States;

e. Defendant agrees to hold herself reasonably available for any interviews the United States may require. The defendant waives any right to the presence of counsel at such meetings, debriefings, or pretrial preparation sessions, unless her attorney specifically requests to be present at each meeting;

f. Defendant agrees to provide to the United States all documents or other items under her control which may pertain to any criminal violation;

g. Defendant understands that her cooperation shall be provided to any local, state, and federal law enforcement agency as requested by counsel for the United States;

h. Defendant agrees and understands that this Plea Agreement requires that her cooperation may continue even after the time she is sentenced. Failure to continue to cooperate after sentence is imposed constitutes a basis to void this agreement by the United States;

i. Defendant agrees that if the United States determines that she has not provided full and truthful cooperation, or has committed any local, state, or federal crime between the date of this Plea Agreement and her sentencing, or has otherwise violated any other provision of this Plea Agreement, or has violated the terms and conditions of her release while on bond as required by the Court, the Plea Agreement may be voided by the United States and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of her cooperation, or upon leads derived therefrom, and this information may be used as evidence against her. In addition, the defendant's previously entered plea of guilty will remain in effect and cannot be withdrawn. Further, any prosecution which is not barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against the defendant in accordance with this Plea Agreement, notwithstanding the expiration of the statute of limitations between the time of signing this agreement and the commencement of the prosecution. It is the specific intent of this Plea Agreement to waive any and all defenses based upon the statute of limitations with respect to any prosecution which is not barred by the statute of limitations on the date this Plea Agreement is signed by the defendant;

j. Defendant agrees to fully and completely assist the United States in the forfeiture and recovery of forfeitable assets, either domestic or foreign, which have been acquired directly or indirectly through the unlawful activities of the defendant, her co-defendants, and her co-conspirators; and

k. Defendant agrees to fully and truthfully disclose the existence, nature, and location of all forfeitable assets in which she has acquired any interest. The defendant acknowledges that the United States may institute civil or administrative forfeiture proceedings against all of those assets and defendant will not contest any such forfeiture proceedings.

9. "Substantial assistance" within the meaning of 18 U.S.C. § 3553(e) has not yet been provided by the defendant. Upon the determination by the United States Attorney for the Western District of Missouri that the defendant has provided "substantial assistance," the United States shall request the Court to reduce the sentence defendant would otherwise receive under the applicable statutes and/or sentencing guidelines pursuant to 28 U.S.C. § 994(n), 18 U.S.C. § 3553(e), and the Sentencing Guidelines, Section 5K1.1. The United States reserves the right to make the sole determination as to whether and when the defendant has provided such substantial assistance and further whether to request a reduction generally or a specific sentence or sentence reduction.

10. In exchange for defendant's agreement to cooperate with the United States, the United States agrees not to use new information that defendant provides about her own criminal conduct except as specifically authorized by Section 1B1.8 of the United States Sentencing Guidelines. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable guideline

range or departing above his guideline range. Defendant understands and agrees, however, that under Section 1B1.8, there shall be no such restrictions on the use of the information: (1) previously known to the United States; (2) revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; (4) in the event there is a breach of this agreement; or (5) in determining whether and to what extent a downward departure as a result of a Government motion pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 is warranted.

11. The defendant understands that if the Court accepts this Plea Agreement but imposes a sentence which defendant does not like or agree with, she will not be permitted to withdraw her plea of guilty.

12. The defendant understands that a mandatory special assessment of \$100 per count of conviction will be entered against the defendant at the time of sentencing. The defendant agrees to deliver to the Clerk of the Court a check payable to the Clerk in the appropriate amount, and to provide evidence of the payment to counsel for the United States ten (10) days prior to sentencing.

13. The defendant agrees not to appeal or otherwise challenge the constitutionality or legality of the Sentencing Guidelines. The defendant understands and acknowledges that her

sentence will be determined and imposed pursuant to those Sentencing Guidelines. Defendant is aware that a sentence imposed under the Sentencing Guidelines does not provide for parole. The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum established for the offenses to which she is pleading guilty.

The parties expressly waive the right to appeal or collaterally attack by post-conviction motion any sentencing issue, including the applicability of certain U.S. Sentencing Guidelines provisions, which have been addressed and specifically agreed upon in this Plea Agreement, and which are set forth in this Plea Agreement. Each party retains the right to appeal only sentencing issues which have not been agreed-upon or which have not been specifically addressed in the Plea Agreement. The defendant expressly waives the right to appeal or collaterally attack by post-conviction motion all other issues.

14. The defendant understands the United States will provide to the Court and the United States Probation Office a Government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The defendant understands these disclosures are not limited to the counts to which the defendant has pled guilty. The United States may respond to comments made or positions taken

by the defendant or defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this Plea Agreement.

15. With respect to the application of the sentencing guidelines to this case, the United States submits, but defendant may contest, that the sentencing guidelines effective November 1, 2001, are applicable to this case, and the United States and the defendant agree as follows:

a. The applicable guideline section for the offense of conviction under Count One of the Indictment, conspiracy to commit interstate transportation of property obtained by fraud, and Counts One and Two of the Information, interstate transportation of property obtained by fraud, is Section 2B1.1.

b. The United States submits, but defendant may contest, based on which version of the guidelines applies, that the base offense level is 6 under Section 2B1.1(a).

c. The United States submits, but defendant may contest based on the amount of loss committed while she was a knowing member of the conspiracy and on what version of the guidelines applies, that there is an increase of 22 levels under Section 2B1.1(b)(1)(L) for a loss of more than \$20 million but less than \$50 million.

d. The United States submits, but defendant may contest based on what version of the guidelines applies, that there is an increase of 4 levels under Section 2B1.1(b)(2) because there were more than 50 victims.

e. The defendant has admitted her guilt and accepted responsibility for her actions. Consequently, she is

entitled to a 2 level reduction pursuant to Section 3E1.1 of the Sentencing Guidelines. Defendant did not admit her guilt and accept responsibility in a timely enough manner to qualify for an additional one point reduction under Section 3E1.1.

f. The defendant's criminal history is believed to be Category I. The parties agree that the Court and the United States Probation Office must determine her applicable Criminal History Category.

k. If the sentencing guidelines set forth above, including all of the adjustments which the United States submits apply, are accurate, the adjusted offense level is 24, resulting in a sentencing range of 97-121 months for a Category I offender.

16. There are no agreements between the parties with respect to any sentencing guideline issues other than those specifically listed in paragraph 15, and its subsections. As to any other issues which may be found to exist, the parties are free to advocate their respective positions at the sentencing hearing.

17. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. The defendant understands that the United States reserves the right in this case to:

a. oppose or take issue with any position advanced by defendant at the sentencing hearing which may be inconsistent with the provisions of this Plea Agreement;

b. comment on the evidence supporting the charge in the Indictment;

c. oppose any arguments and requests for relief the defendant may advance on an appeal from the sentences imposed;

d. oppose any post-conviction motions for reduction of sentence, or other relief.

19. The defendant has read the Plea Agreement, understands it, and by her signature, states that it is true and accurate and not the result of any threats or coercion.

Both parties agree that no promises or agreements have been made other than those set forth in the Plea Agreement, nor has the United States promised the defendant any additional consideration to induce her to sign this Plea Agreement. The defendant acknowledges that she is entering into this Plea Agreement and is pleading guilty freely and voluntarily.

The defendant further acknowledges her understanding of the nature of the offense or offenses to which she is pleading guilty and the elements of the offense or offenses, including the penalties provided by law, and her complete satisfaction with the representation and advice received from her undersigned counsel.

The defendant also understands that she has the right to plead not guilty or to persist in that plea if it has already

been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against her, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense. Defendant understands that by pleading guilty, she waives or gives up those rights and there will be no trial.

The defendant further understands that if she pleads guilty, the Court may ask her questions about the offense or offenses to which she pled guilty, and if the defendant answers those questions under oath and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement.

The defendant also understands she has pled guilty to felony offenses and, as a result, may be deprived of certain rights, such as the right to vote, hold public office, serve on a jury, and possess a firearm.

Todd P. Graves
United States Attorney

Dated: May 15, 2003

By s/ J. DANIEL STEWART
J. Daniel Stewart
Assistant United States Attorney

Dated: May 15, 2003

By S/ JAMES C. BOHLING
James C. Bohling
Assistant United States Attorney

Dated: May 15, 2003

By S/ GWENDOLYN BAKER

Gwendolyn Baker
Defendant

Dated: May 15, 2003

By: S/ LANCE D. SANDAGE

Lance D. Sandage
Attorney for Defendant Baker